

7078 66
R E G U L A T I O N S

Rose (W)

7

F O R

The T E N A N T S

Of the Right Honourable

J A M E S Earl of F I F E,

Within the

C O U N T Y of E L G I N.

A B E R D E E N:

Printed by J. CHALMERS & Co.

MDCCLXXVI.



740

BARON COURT of the Baronies of
Innes, Coxtown, Garmouth, Pluscarden,
and others, belonging to the Right
Honourable the Earl of *Fife*, within
the County of *Elgin* and *Forres*.

*At INNES-HOUSE, the Fifteenth Day of
August, One thousand seven hundred and
seventy-six Years.*

IN a Baron Court of the barony of *Innes* and *Coxtown*, held by *William Rose* of *Mountcoffer*, baron-baillie over the said lands and barony; *James Sinclair*, writer in *Elgin*, appointed clerk of said baron court; *James George*, at *Mains* of *Innes*, fiscal; and *James Duncan*, in *Longbride*, appointed officer; who all gave their oaths *de fidei administratione officii*.

COMPEARED *William Reid*, factor to the said Earl, and represented, That it was necessary and expedient for the proper regulation of the different estates and inhabitants thereof, that REGULATIONS should be established for the police of the country, and the good management of the lands, and the good order and government of tenants, sub-tenants, cottars, and others living in said lands. That they have been very irregular in time past; particularly, in the committing of abuses in mosses, cutting of green ground, holing of fir, burning of muir and heather in forbidden time; also have been destroyers of growing timber, cutting and destroying of young planting, destroyers also of turnep, kail, and winter crops; allowing their cattle
and
26

and bestial to go thro' their neighbours lands without herds, or proper caring for them, hurting the fallowed and turnep fields in winter, contrary to the well known laws of the kingdom. He represents also, that they have been refractory and backward in obtempering of the Baron Court acts and regulations made heretofore thereanent, and anent the keeping up of the mill leads, water-gangs, and mill waters of the same: That they have been irregular in the breach of the sabbath day; guilty of cursing, swearing, drunkenness, and such like idle and profane practices; guilty also of resetting beggars and vagrant persons, contrary to the laws of the land: Also that several people have been in custom of jumping dykes, destroying hedges, and filling up of ditches; and refractory to, and backward of performing their statute labour upon the highways: And therefore craved that the tenants, subtenants, cottars, and other inhabitants of said lands, should be called and examined; and if found guilty of all, or any of the different crimes above mentioned, that they should be punished, or otherwise, at least, that they should be enjoined to the proper observance of the laws made in that behalf; and that the baillie would of new enact and ordain rules and regulations proper for future conduct, that the people may be upon their guard in time coming; and be also prevented from poaching of game; keeping of vicious or wandering dogs; killing of pigeons, hurting of pigeon-houses, slayers of black or red fish, &c.

WILLIAM REID.

WILL^m. ROSE, Baillie.

JAMES SINCLAIR, Clerk.

ACCORDINGLY the tenants, subtenants, cottars, and other inhabitants being lawfully summoned to this day

SECONDLY, " That the tenant, subtenant, and
 " cottar, is, and shall be prohibited from cutting of
 " grafs or green ground or meadow, and discharged,
 " as they are hereby discharged, from using mofs yird
 " for midden dung."

THIRDLY, And in terms of the 15th article, It is enacted and hereby declared, " That the said tenants, subtenants, cottars, and other inhabitants shall be bound to cast their firing, peats and turff, in such mosses and muirs as the heritor or factor shall appoint; and that the peats and turffs so cast shall be in such places and in such banks and lair, and under the sight and by the direction of the moss grieve for the time; and that all potting of moss, poaching for fir, and abusing or burning of muir may be prevented."

FOURTHLY, And in terms of the 16th article, Penalties for
The

selling of peats,
heather or
broom.

The tenants are expressly prohibited, as they are hereby forbidden and discharged “ from selling of peats, “ turff, halter, heather or broom, and that under the “ penalty of ten shillings, for the first offence, for each “ load of said peats, turff, heather, or broom : And “ for the second fault, one pound sterling, for each “ load of said peats, turff, heather, or broom : And “ being thrice convicted, shall not only be fined in the “ said sum of one pound sterling, but also ordained to “ sit in the stocks for one hour in the day, and be “ twenty-four hours imprisoned.

Penalties for
killing of hares,
&c. and for de-
stroying of par-
tridge or muir-
fowls nests.

FIFTHLY. And it is further enacted, that the fore-
said tenants, cottars, and subtenants, and each of
them, shall and are hereby forbidden and discharged
from killing of hares, partridge, or muirfowl, and from
herrying or otherwise destroying of partridge or
muirfowls nests, and that under the penalty of
one pound sterling, *toties quoties*, besides, or other-
wise to be liable, in terms of the act of parliament,
anno 1707, chap. 13. And act of twenty-fourth *George*
II. chap. 34. And other acts and statutes previously
made thereanent.

Tenants not to
take away made
dung or middens
from their pos-
session, the in-
coming tenant
being to pay the
value thereof by
estimation.

SIXTHLY. The tenant is hereby discharged in all
time coming from taking away any made dung or
middens from his possession ; but the incoming tenant
in case of his removal, is to pay the value, conform to
the estimation of two estimators, mutually chosen in
the barony.

Anent herding
of cattle in win-
ter as well as in
summer, and pe-
nalties incurred
thro' their de-
stroying their
neighbour's

AND WHEREAS it has been further represented,
not only by the factor, but also by many principal
tenants, that it would be of good use, benefit, and
advantage in the estate, and promote the improvement
of the country, to have the laws for the preservation
of

of sown grafs, turnep, hedges, planting, and inclo-
 sures put strictly into execution: And the baillie find-
 ing that by the 39th chap. 1st parl. 1st sess. of king
James VII. and 11th act 2d sess. of the 1st parl. of
 the same king, it is enacted and ordained, That all
 heritors, life-renters, tenants, cottars, and others posses-
 sors of lands or houses, shall cause herd their horses,
 nolt, sheep, swine, and goats, the whole year, as well
 in winter as summer; and in the night time shall cause
 keep the same in houses, folds, or inclosures, so as
 they may not eat or destroy their neighbours grounds,
 woods, hedges, or planting, under the penalty of half
 a merk, *toties quoties*, for ilk beast they shall have
 going upon their neighbour's grounds, by and attour
 the damages done to grafs or planting; and that it is
 declared lawful for the heritor or possessor of the
 ground to detain the said beasts until he be paid of said
 half merk for ilk beast found upon his ground, and of
 his expences in keeping the same, and that without
 prejudice of other acts of parliament made against des-
 troysers of planting and inclosures: And that if any
 person break down or pull up dykes, hedges, or ditches,
 leap, or suffer horse, nolt, or sheep, to go over them,
 they shall be liable in ten pound *scots* to the person
 injured, *toties quoties*.

grounds, plant-
 ing, &c. and for
 keeping suffi-
 cient herds

No person by
 himself or be-
 tial to break
 down or go over
 dykes, hedges,
 or ditches.

AND FINDING that by chap. 26th, 23d stat. of
Geo. II. it is enacted and declared, That if any person
 shall steal, take away, or maliciously pull up or destroy
 any turneps, potatoes, or other field crops, on the lands
 of any other person, and be thereof convicted before
 any of his majesty's justices of peace of the place where
 the offence is committed, either by confession, or oath
 of one witness, he shall, for the first offence, pay the
 damage to the owner, and also any sum not exceeding
 ten

Against stealing
 of potatoes, tur-
 nips, &c.

ten shillings sterling to the poor of the parish; and failing the payment of such damage and fine within the time limited by the justice, the offender shall be committed to the house of correction for any time not exceeding one month; or may be whipped, as to the justice shall seem meet: And if any person shall be convicted, as aforesaid, of a second offence, he shall be committed to the house of correction for three months.

AND the baillie, by daily observation, and repeated complaints of the industrious tenants, knowing the necessity and reasonableness of enforcing these several laws: And considering that the tenants and possessors of the said estate, are, by their tacks and agreement with the heritor, expressly bound and obliged to observe all acts and regulations of his courts anent the order and management of his estate, doth hereby **STATUTE** and **ORDAIN**, that all tenants, cottars, and other possessors of lands or houses within the said estate, shall cause herd their horses, nolt, sheep, swine, and goats, the whole year, as well in winter as in summer; and in the night time shall cause keep the same in houses, folds, or inclosures, so as they may not eat or destroy their neighbours grounds, woods, hedges, planting, grass, turnep, or other crop or grain; and that no person or persons shall break down or pull up dyke, hedge, or ditch; or leap, or suffer horse, nolt, or sheep, to go over them; or shall steal, or take away, or maliciously pull up, or destroy, any turnep on the lands possessed by any other person within the said estate; but shall strictly observe the rules and orders established by the acts above recited, and other acts of parliament made thereanent: **CERTIFYING** any person contraveining the same, that the several penalties and

and damages which shall happen to be incurred, will be levied with the utmost rigour. AND for the more effectually avoiding the said penalties and damage, The baillie DECERNS and ORDAINS every tenant who pays one hundred pounds *Scots* or upwards, to keep a sufficient herd; and such tenants or subtenants who reside contiguous, and pay smaller rents, having their grounds either mixed or contiguous, to contribute the expence of one sufficient herd, in proportion to their several rents, such rents *in cumulo* amounting to or exceeding one hundred pounds *Scots*; allowing nevertheless every tenant, subtenant, cottar, or householder, to herd their beasts, and keep the same upon their own grounds, if they incline. AND appoints this act to be read and duly intimate the first *Sunday* of every month at the different kirks wherein the said estates do lie, immediately after dismissing of the congregation, that none may pretend ignorance.

AND the baillie having considered that there are many idle vagrants and sturdy beggars going through the country: That the laws hitherto made for compelling the said vagrants and sturdy beggars to work have been in desuetude, as well as the act 1424, chap. 42. which appoint those vagrants and sturdy beggars, between the ages of 14 and 70, who beg without a badge or testimony given them by a magistrate, to be burnt in the check and banished: And the act 1535, chap. 22. where none are permitted to beg in any other parish than that of their birth, under the pain contained in the foresaid act of K. *James I. of Scotland*: Considering also that it is ordained, "That no thigger be tholed to beg within burgh or land, between fourteen and threescore and ten years; but they be seen be the council of the commons of the country, that they may

Anent beggars,
vagrants, for-
tune-tellers, and
the like.

not

not win their living otherwise, and that they shal beis founden to have a certain takin, under the penalty foresaid of burning in the cheek, and banishing of the country." as more fully contained in said act. THAT under the act 1579, chap. 74, It is enacted that vagrants who shall be found begging are to be imprisoned by the judge ordinary, and put into the stocks or irons till their trial; upon conviction, that they are to be scourged and burnt in the ear, and upon repetition of the crime to suffer death: THE BAILLIE therefore strictly recommends the due attention of these laws; and to the constables in the bounds to seize and take such vagrants and sturdy beggars before the sheriff or any justice of the peace for examination. Under the foresaid act 1579, chap. 74, are comprehended all who go about to foretel fortunes, playing at subtil and unlawful plays, as jugglery, &c. all who can give no good account how they can lawfully earn their bread; or if they be able bodied, are idle, shunning labour; all who use forged licences to beg; or, who, without sufficient testimonials, alledge they have been shipwrecked, burnt out of their houses, or herried.

Penalties forfeited by cursing, swearing, and drunkenness.

AND the baillie finding it too much a practice grown in among all ranks of people, the custom of swearing, and using of unlawful oaths, and pronouncing of God's name in vain, the same being forbid by the laws of God, as well as by the laws of man: He hereby ENACTS and DECLARES, that whatever person shall profanely curse or swear, and be thereof convicted on confession, or oath of one witness, shall forfeit one shilling sterling for the first fault, two shillings sterling for the second fault, and for every other offence, after a second conviction, shall forfeit three shillings sterling to the poor of the parish; and this by

by and attour the charges to be ascertained in the prosecution: And if he, she, or they, shall fail in payment of the foresaid fines, the guilty person or persons so convicted shall be ordained to hard labour for six days, and be confined in the ordinary prison for other six days.

AND WHEREAS there are fundry laws not only shewing that the sin of drunkenness and tippling is abominable to God, but against the established acts of parliament of the kingdom: AND the baillie considering the same, and that the custom is too much in practice in the country, He therefore ENACTS, STATUTES, and ORDAINS, That if any person continues drinking or tippling in any inn, victualling house, or ale house, or haunting any tavern, he shall, upon conviction, on the oath of one witness, forfeit for every offence, three shillings and four pence sterling; and if he fails in the due payment, to be levied by poinding and distress; and if unable to pay the said fine, the offender to be punished by setting him in the stocks for four hours. And it is recommended to all constables, ground officers, to discover such offences: And in case of the conviction of any keeper of an alehouse, such keeper of an alehouse will be disabled from keeping the same for three years: And every person who shall be drunk, and convicted thereof upon the oath of one witness, shall forfeit, for the first fault, five shillings sterling; and if unable to pay, to be set in the stocks for the space of four hours, or otherwise punished, conform, and in terms of the act of parliament, of *Charles II.* sess. 1. chap. 19. ratified by the 2d parliament, chap. 22. of the same king, and act of parliament of *James VI.* parliament 22. chap. 20.

B

AND

Tenants and
others within the
estate to bury
their dead horses
&c.

AND the baillie having also considered that sundry complaints were made upon good reasons, that people who had horses, nolt, or sheep, or other bestial who died by accident, that they threw the same out on the roads, high-ways, and open fields, to the great nuisance of the lieges, and tending to the inflammation of madness among dogs: To remedy which, it is **ENACTED** and **DECLARED**, That every person or persons is and are hereby bound, within said estate, to bury the dead carcases of the said animals sufficiently upon the grounds of the place where they happen to die; certifying the owners, that they will be liable in a fine of ten shillings sterling for each carcase so allowed to remain upon the grounds for twelve hours after their deaths; and the same to be levied by distress and poinding of their readiest goods.

And prohibited from making head-riggs, quarries, or pits on the road-side.

AND further, it being represented, That the tenants and inhabitants of said lands are deficient in making of head-riggs near to the highways, whereby the roads are much hurt and damaged; and by making of holes, quarries, and pits, by their land-ends: Be it therefore **ENACTED**, That the foresaid tenants and others are, in time coming, prohibited from such customs, under the penalty of ten shillings sterling, to be paid upon conviction; and the same to be levied as

Constables of-
ficers, and others
informing upon
offenders, to be
intitled to the
half of the fine.

foresaid: And it is recommended to all constables, ground officers, and others, to be attentive to the observance of this regulation in their bounds, and that they may inform upon offenders; promising hereby the half of the fine to the informer, the other half to go to the repairs of said roads, or other means proper for the keeping the same clean, free of dirt, and public nuisances.

Acts of parlia-

AND WHEREAS it has been also represented to the

the baillie aforesaid, that the cutting of timber, de-
 stroying of nursery timber, trees, and other growing
 wood, shrubs and plants, have been for a long time
 unattended to in the proper way of checking such
 unlawful practices. The baillie, duly considering the
 same, does make this recommendation and injunction
 to the whole of the tenants and others foresaid, inform-
 ing, that by the act of parliament, 1st of *Geo. I.* chap.
 48. And the 6th of the same king, chap. 16th. If any
 person shall by night or by day, cut, take, destroy,
 break, throw down, bark, pluck up, burn, deface,
 spoil or carry away any wood, poles, tops of trees,
 under-wood, thorns, or quick-fets, without the con-
 sent of the owner, or of the person chiefly entrusted
 with the care and custody thereof; or shall break open,
 throw down, level or destroy any hedges, gates, posts,
 stiles, railing, walls, fences, dykes, ditches, banks,
 or other inclosure, the owner may have such satisfaction
 and recompence from the inhabitants of the parishes,
 towns, villages or places joining on such wood, and
 recover such damages against such place or places, if
 the offender is not known. But, if the offender is
 known, two justices, on complaint of any inhabitant or
 of the owner of the wood, may cause the offender to
 be apprehended, and on conviction shall commit him
 to the house of correction to hard labour, for three
 months, and where there is no house of correction,
 then to the prison for four months, and shall order the
 offender to be publicly whipped by the master of such
 house of correction once every month on a market day,
 and where there is no house of correction, the justices
 shall order him to be whipped by the common hangman
 once a month, during such four months, on the mar-
 ket day; and before he be discharged, to find
 sufficient security for his good behaviour for two years.

B 2

And

And by another act, twenty-ninth *George II.* chap. 36. Any person guilty as above, where any person has right of common, he shall incur the same penalties.

And by a third act of the 6th parliament of *Geo. III.* chap. 48. Every person guilty as aforesaid, on the oath of one witness before one justice, shall for the first offence forfeit twenty pounds sterling, together with all charges, to be ascertained by such justice, and on not payment thereof to be committed by such justice to the common jail for any time not exceeding twelve months, nor less than six; for the second, to forfeit not exceeding thirty pounds, with charges of suit as aforesaid; on non-payment to be committed for eighteen months, and not under twelve, or until the penalty and charges be paid. And if any person shall be guilty of a like offence a third time, he shall be deemed guilty of felony, and transportation ensue for seven years by the court who tries him: And it is understood that all oak, beech, chesnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore, and birch trees shall be deemed timber trees within the meaning of this act.

Plucking up,
spoiling or de-
stroying of roots
and shrubs in
fields or gardens

6th *Geo. III.* chap. 48. And every person who shall pluck up, spoil, or destroy any root, shrub, or plant, roots, shrubs out of the fields, nurseries, gardens, or garden grounds, or other cultivated grounds of any person, without the consent of the owner, and shall be thereof convicted upon the oath of one witness before one justice, shall for the first offence forfeit not exceeding forty shillings with the charges, and if not paid immediately, the justice may commit him to the house of correction, for one month, to be kept to hard labour, and once whipt; for the second offence forfeits five pounds and charges, and if not paid to be committed as above for three months; and the third fault is deemed felony as above, and the justice authorized to transport him for seven years.

9th *Geo.* III. chap. 41. If any person shall go into the woods, and cut, top, or spoil, split or damage any kind of wood, green shrubs, or young trees, or carry the same away; or shall cut down, destroy, or carry away any hollies, thorn, or quicksets, or have in his custody and shall not give a satisfactory account thereof; and thereafter convicted before one justice, on the oath of one witness, shall, for the first offence, forfeit not exceeding forty shillings, and all charges of suit, as as above: And if not paid immediately, the justice shall commit him to the house of correction for one month, to be kept to hard labour, and once whipt there. And for the second offence, shall forfeit five pounds, with charges of suit, as aforesaid: And if not immediately paid, then to be committed to the house of correction, for three months, to be kept to hard labour, and whipped once every month. And if the offence shall be committed by the person a third time, and duly convicted, he shall be deemed an incorrigible rogue, and punished as such; which, by this act, is commitment by the sessions to the house of correction, for any time not exceeding two years, nor less than six months, to be kept to hard labour and whipped, in such manner and at such times and places as the justices shall think fit. The said forfeitures to be distributed, half to the informer, and half to the person aggrieved. And the act bears, that if any person shall hinder or attempt to prevent the seizing or securing any person employed in carrying away any such timber, he shall forfeit ten pounds sterling to him who shall convict him; and failing thereof, the justice shall commit him to the house of correction for six months. But wilful destroyers and cutters of growing trees to be punished to the death as thieves. *James VI.* parl. 11th, chap. 82. of Scotland.

Topping, splitting, or damaging of young trees, hollies, &c.

Act parl. 6th, *Geo.* III, chap. 36. Every person ^{Barking and de-}
who

stroying of Oak
and other trees.

who shall in the night time lop, top, cut down, break, throw down, bark, burn, or otherwise spoil or destroy any oak, beech, ash, elm, fir, chesnut, asp, timber-tree, or other tree standing for timber, or likely to become timber, or shall pluck up, dig up, break, spoil, or destroy any root, shrub or plant, of the value of five shillings, and which shall be growing, or in the garden ground, nursery ground, or other inclosed ground of any person, or shall be aiding or assisting therein; or shall buy or receive such root or shrub, of the value aforesaid, knowing the same to be stolen, shall be guilty of felony, and transported for seven years.

Burning of under-wood or cop-
pice.

If any person shall maliciously set on fire, or burn, or cause to be burnt, any wood, under-wood, or coppice, shall be guilty of felony, by act of parliament, *Geo. I. stat. 2d. chap. 48.*

Kindling and
setting fire to
hills, heather,
and muirground

AND whereas the pernicious custom of muirburns, the kindling and setting hills and muir-ground on fire, has been too much practised of late: And considering that it is a heinous crime in itself, and of bad consequences to the country, The baillie not only hereby **PROHIBITS** and **DISCHARGES** all person or persons from making of muirburns, and kindling or setting on fire any heath, muir, or heather, from the last day of *March* to the first day of *November*, under the penalty of forty shillings sterling for the first offence, five pounds sterling for the second, and ten pounds sterling for the third offence. And the baillie does hereby give notice, that in terms of the act of the sixth year of his present majesty, the possessor or nearest tenant on the ground where any muirburn or burning of heather happens, is liable for the above penalties, unless

unless such possessor or tenant shall discover the person actually guilty of the offence.

AND WHEREAS the factor has divers times complained that the tenants of the baronies of *Innes* and *Mefts* have been refractory and backward in coming in, and agreeable to their tacks, and custom of the barony, repairing and keeping clean the mill-burn of *Innes-mill*, both above and below the said mill: And it being also represented to the baillie, that the custom foresaid of keeping clean the mill-burn of *Innes* has been for fifteen years back and upwards, as follows, viz. The tenants of *Cotts*, *Folds*, *Newton*, and *Stonewalls*, have dressed said burn from the *Loch* of *Cotts*, upwards to the corner of the *Oldward*, or the utmost dyke of Lord *Iife's* parks, at which place the tenants of both the *Mefts* began, and dressed up to the corner or turn of the burn, opposite to *Whinnyhall*, where the tenants of *Speyslaw*, *Branstown*, *Broomhill*, *Water-scott*, *Slintack*, *Fernyfield*, *Loch-hill*, *Kempstown*, *Barnyards*, and *Innes-mill* began, and dressed out the burn until it go to the mill-wheel of the mills of *Innes*; and that the whole estate above-mentioned were always in use and custom when called for, of going to the hills of *Tiendland* and *Bawds*, to assist in conducting of the water down therefrom to the said mill-wheel; Which custom the baillie having enquired into, and judicially acknowledged by the tenants present, he finds the same established, and well known among the generality of the tenants on the estate: He therefore not only APPROVES thereof, but also finds the tenants respectively liable in performance of the service above-mentioned, and DECERNS and ORDAINS them, and the possessors of the lands foresaid, with their whole men servants, subtenants, and cottars, to repair to the mill

The tenants on the barony of *Innes*, to repair and keep clean the millburn.

mill-burn, agreeable to the custom above described, and there sufficiently to dress, clean, and repair the said mill-burn and banks thereof on each side, now that the said banks are, or will be put, in sufficient condition by the heritor; such tenants and others aforesaid always getting forty-eight hours previous warning from the officer of the barony, either at the kirk door or their own houses, as the factor on the estate shall direct: Certifying the absent or absents, except upon a reasonable and lawful excuse, that the factor will immediately employ men upon their charges, for cleaning out such parts of the said burn as shall fall to their share, conform to the divisions above-mentioned; and the expence and charges of the men so employed, to be recovered from such absents, or others neglectful or disobedient to that business, by warrant of poinding, signed by the baron baillie, or his depute in a summary way, besides being found liable for the necessary charges, and twenty shillings sterling of penalty for their contempt.

Anent preserv-
ing of pigeons,
and destroyers
of Bees.
The act of par-
liament relating
to the driving of
carts, carriages,
and waggons,
and for remov-
ing of obstruc-
tions and nuis-
ances upon high-
ways to be strict-
ly observed.

LASTLY, the baillie recommends strict obedience to, and observance of the laws relating to the preserving of pigeons, destroyers of pigeon-houses, bees, and beehives; and also strictly enjoins the observance of the act of parliament relating to carts, carriages, sledges, and waggons, and removing of obstructions and nuisances upon highways, past in the thirteenth year of the reign of his present Majesty, and remits to the factor to make out excerpts of the same, to be distributed amongst the tenants.

AND further appoints these acts and rules to be printed, and the clerk to employ a proper printer for that purpose, and to strike off five hundred copies of the same, to be distributed throughout the estate. And that

[19]

that none may pretend ignorance, the said acts are ordained to be published at the kirk doors the first *Sunday* of every quarter throughout the year.

WILLm. ROSE, Baillie.

JAMES SINCLAIR, Clerk.

T H E E N D.

1917
The above may be printed and
reproduced in the form of a
copy of every printed book in the year.



